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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,569	01/05/2004	David Thomas	VIGN1350-1	3583
44654	7590	04/20/2007	EXAMINER	
SPRINKLE IP LAW GROUP 1301 W. 25TH STREET SUITE 408 AUSTIN, TX 78705			THAI, TUAN V	
			ART UNIT	PAPER NUMBER
			2186	
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	04/20/2007	PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/751,569	THOMAS ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Tuan V. Thai	2186

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 10 January 2007.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 46-113 is/are pending in the application.
  - 4a) Of the above claim(s) 1-45 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 46-49, 52-55, 58-59, 61-65, 67-73, 75-81, 83-87, 89-93, 95-101, 103-109, 111-113 is/are rejected.
- 7) Claim(s) 50,51,56,57,60,66,74,82,88,94,102 and 110 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 05 January 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 1/10/2007.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

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**Part III DETAILED ACTION**

***Response to Amendment***

1. This office action is in response to Applicant's communication filed January 10, 2007. This amendment has been entered and carefully considered. Claims 46-113 are again presented for examination. Claims 1-45 have been canceled.
2. The rejection of claims 59 and 62-63 under 35 U.S.C. 112 second paragraph is withdrawn due to amendment filed January 10, 2007.
3. Applicant's arguments with respect to claims 46-49, 51-55, 57-59, 61-65, 67-73, 75-81, 83-87, 89-93, 95-101, 103-109, 111-113 have been considered but are not deemed to be persuasive. The rejections are maintained as follow.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

- (e) the invention was described in (1) an application for

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patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 46-49, 52-55, 58-59, 61-65, 67-73, 75-81, 83-87, 89-93, 95-101, 103-109, 111-113 are rejected under 35 U.S.C. § 102(e) as being anticipated by Todd et al., hereinafter Todd (USPN: 6,742,059);

As per claim 46, Todd discloses the invention as claimed including a method for managing a cache comprising polling a cached asset according to a first schedule to determine if said cached asset has been active within a first period of time; if said cached asset has not been active within said first period of time; assigning said cached asset a new status, and polling said cached asset according to a second schedule corresponding to the new status to determine if said cached asset has been active within a second period of time; for example, Todd clearly discloses when a "request for changes" object is received by the server from a client application it can contain a timestamp indicating when the last request for changes was completed. The server agent can then compare this "request for changes" timestamp against each separate timestamp associated

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respectively with each one of the software objects in the agent's cache. If the timestamp comparison shows a sufficiently-long period of time from the prior request for changes with respect to any one of the objects, then that object is permitted to provide new information, if any. This comparison is done on an object-by-object basis until all of the objects in the set are polled or compared to permit a determination of which objects in the set have changed (e.g. see column 5, lines 54-67).

As per claim 47, wherein in the step of polling said cached asset according to said first schedule further comprises processing a timestamp associated with said cached asset (e.g. see column 5, lines 57 et seq.).

As per claim 48, wherein said timestamp further comprises a last accessed timestamp (e.g. see column 5, lines 51-53).

As per claim 49, wherein said timestamp further comprises a last modified timestamp (e.g. see column 5, lines 54-56).

As per claim 58; Todd discloses the invention as claimed including a method for managing a cache comprising storing an asset in a cache to create a cached asset; and polling the cached asset with a frequency dependent on the relative activity of the cached asset (e.g. see column 5, lines 48 et seq.; particularly lines 63-67).

As per claim 59, Todd discloses wherein the frequency

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increases or decreases as the relative activity of the cached asset increases or decreases since Todd teaches that if the timestamp comparison shows a sufficiently-long period of time from the prior request for changes with respect to any one of the objects, then that object is permitted to provide new information, noting that the frequency increases as cached asset activity increases with shorter timestamp indication (e.g. see column 5, lines 60 et seq.);

As per claim 61, wherein polling the cached asset further comprises processing a timestamp associated with the cached asset (e.g. see column 5, lines 51 et seq.).

As per claims 62-63, wherein said timestamp further comprises a last accessed/modified timestamp (e.g. see column 5, line 53).

As per claim 70, Todd discloses the invention as claimed including a method for managing a cache comprising assigning a cached asset a first status, polling the cached asset according to a first schedule corresponding to the first status, assigning the cached asset a second status, and polling the cached asset according to a second schedule corresponding to the second status; for example, Todd clearly discloses when a "request for changes" object is received by the server from a client application it can contain a timestamp indicating when the last request for changes was completed. The server agent can then

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compare this "request for changes" timestamp against each separate timestamp associated respectively with each one of the software objects in the agent's cache. If the timestamp comparison shows a sufficiently-long period of time from the prior request for changes with respect to any one of the objects, then that object is permitted to provide new information, if any. This comparison is done on an object-by-object basis until all of the objects in the set are polled or compared to permit a determination of which objects in the set have changed; noting that in polling all of the objects in the set, Todd clearly teaches polling objects in different schedule including first and second schedules as being claimed (e.g. see column 5, lines 54-67).

As per claim 71, Todd discloses polling the cached asset according to a third schedule corresponding to a third status is taught by Todd since Todd discloses polling ALL of the objects in the set for the comparison operation (e.g. see column 5, lines 63-67).

As per claim 72, Todd discloses polling the cached asset according to the first schedule further comprises polling the cached asset according to the first schedule for a first period of time (e.g. see column 5, lines 65-66).

As per claim 73, Todd discloses assigning the cached asset the second status if the cached asset has not been active within the first period of time as being equivalent to timestamp which

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As per claim 75, wherein polling according to said first schedule and polling according to said second schedule further comprise processing a timestamp associated with said cached asset (e.g. see column 5, lines 51 et seq.).

As per claims 76 and 77, wherein said timestamp further comprises a last accessed/modified timestamp (e.g. see column 5, lines 51-53).

As per claim 86, see arguments with respect to claims 46, 58 and 70; noting that polling the asset with a frequency dependent on the relative activity of the asset is taught by Todd since Todd noting that in polling all of the objects in the set, Todd clearly teaches polling objects in different schedule including first and second schedules as being claimed (e.g. see column 5, lines 54-67).

As per claim 87, Todd discloses wherein the frequency increases or decreases as the relative activity of the asset increases or decreases since Todd teaches that if the timestamp comparison shows a sufficiently-long period of time from the prior request for changes with respect to any one of the objects, then that object is permitted to provide new information, noting that the frequency increases as cached asset activity increases with shorter timestamp indication (e.g. see column 5, lines 60 et seq.).

As per claim 88, polling the asset with a first frequency

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corresponding to a first status of the asset, and polling the asset with a second frequency corresponding to a second status of the asset; wherein the first status and the second status are based on the relative activity of the asset is taught by Todd as being equivalent to each object in the set has an associated timestamp (e.g. see column 5, lines 51 et seq.).

As per claim 89, wherein polling the asset further comprises processing a timestamp associated with the asset (e.g. see column 5, lines 51 et seq.).

As per claims 90 and 91, wherein said timestamp further comprises a last accessed/modified timestamp (e.g. see column 5, line 53).

As per claim 98; Todd discloses the invention as claims including a method for managing assets comprising assigning an asset a first status, polling the asset according to a first schedule corresponding to the first status; assigning the asset a second status, and polling the asset according to a second schedule corresponding to the second status; for example, Todd clearly discloses when a "request for changes" object is received by the server from a client application it can contain a timestamp indicating when the last request for changes was completed. The server agent can then compare this "request for changes" timestamp against each separate timestamp associated respectively with each one of the software objects in the agent's

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cache. If the timestamp comparison shows a sufficiently-long period of time from the prior request for changes with respect to any one of the objects, then that object is permitted to provide new information, if any. This comparison is done on an object-by-object basis until all of the objects in the set are polled or compared to permit a determination of which objects in the set have changed; noting that in polling all of the objects in the set, Todd clearly teaches polling objects in different schedule including first and second schedules as being claimed (e.g. see column 5, lines 54-67).

As per claim 99, polling the asset according to a third schedule corresponding to a third status is taught by Todd since Todd discloses polling ALL of the objects in the set for the comparison operation (e.g. see column 5, lines 63-67).

As per claim 100, polling the asset according to the first schedule further comprises polling the asset according to the first schedule for a first period of time (e.g. see column 5, lines 65-66).

As per claim 101, Todd discloses assigning the asset the second status if the asset has not been active within the first period of time as being equivalent to timestamp which indicated zero-time-accessed that known to be embedded in system of Todd since each object has an associated timestamp (e.g. see column 5, lines 51 et seq.).

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As per claim 102, wherein polling according to the first schedule occurs at a greater frequency than polling according to the second schedule (e.g. see column 5, lines 60 et seq.).

As per claim 103, wherein polling according to said first schedule and polling according to said second schedule further comprise processing a timestamp associated with said asset (e.g. see column 5, lines 51 et seq.).

As per claims 104 and 105, wherein said timestamp further comprises a last accessed/modified timestamp (e.g. see column 5, line 53)

***Rejections - 35 USC § 103.***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 52-55, 64-65, 67-69, 78-81, 83-85, 92-93, 95-97 and 106-109 and 111-113 are rejected under 35 U.S.C. 103(a) as being unpatentable over Todd et al., hereinafter Todd (USPN:

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6,742,059).

As per claims 52-55; see arguments with respect to claims 46-51 respectively. Todd discloses the invention as claimed, Todd however does not particularly disclose a computer-readable medium encoded a computer instruction for performing the steps as being claimed in claims 46-49. However, one of ordinary skill in the art would have recognized that computer readable medium (i.e., floppy, cd-rom, etc.) carrying computer-executable instructions for implementing a method, because it would facilitate the transporting and installing of the method on other systems, is generally well-known in the art. For example, a copy of the Microsoft Windows operating system can be found on a cd-rom from which Windows can be installed onto other systems, which is a lot easier than running a long cable or hand typing the software onto another system. Therefore, it would have been obvious to put Todd's program on a computer readable medium, because it would facilitate the transporting, installing and implementing of Todd's program on other systems.

As per claims 64-65 and 67-69; they encompass the same scope of invention as to that of claims 58-59 and 61-63. See arguments with respect to claims 58-59, 61-63 and 52-55 as being detailed above.

As per claims 78-81 and 83-85; they encompass the same scope of invention as to that of claims 70-73 and 75-77. See arguments

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with respect to claims 70-73, 75-77 and 52-55 as being detailed above.

As per claims 92-93 and 95-97; they encompass the same scope of invention as to that of claims 86-87 and 89-91. See arguments with respect to claims 86-87 and 89-91 and 52-55 as being detailed above.

As per claims 106-109 and 110-113; they encompass the same scope of invention as to that of claims 98-101 and 103-105. See arguments with respect to claims 98-101, 102-105 and 52-55 as being detailed above.

**Allowable subject matter**

8. Claims 50-51, 56-57, . 60, 66, 74, 82, 88, 94, 102 and 110 are objected to as being dependent upon a rejected based claims, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. As to the remark; (a) Applicant's counsel argue that the Todd neither expressly nor inherently describes a method and a computer program product embodying the method of managing cached digital assets (amendment's page 14, 5<sup>th</sup> paragraph), and (b) Todd's management software does not manage a cache or poll a cached asset at different frequencies depending upon the relative activity of the cached asset, and even if one of ordinary skill in the art at the time of the invention would have been motivated

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to put Todd's program on a computer readable medium, the result (i.e., Todd's server agent software embodied on a computer readable medium) still would be for remotely controlling peripherals and would not execute to manage a cache according to embodiments of the invention as recited in Claims 46-51, 58-63, 70-77, 86-91 and 98-105, where the frequency of polling a cached asset is dependent upon that cached asset's activity status (e.g. see page 15, 3<sup>rd</sup> paragraph; also page 17, 3<sup>rd</sup> paragraph).

With respect to (a); Examiner disagrees with Applicant's counsel and would like to emphasize that Todd's invention clearly involves with managing cache digital assets; for example, Todd, staring at column 2, lines 12 et seq. discloses that the cache agent maintains an image of the peripheral state that is occasionally refreshed at a certain polling interval, in addition, Todd's invention relates to a methodology to be practiced on the foregoing computer system to assess a peripheral device's state change status *stored in cache memories of the multiple servers employed in the system.* The methodology steps include (a) requesting state change status; (b) determining the primary or secondary nature of the request; (c) if primary obtaining complete state change status; (d) if secondary obtaining limited state change status that does not conflict with the complete status; and (e) repeating these steps until each server has been polled and has provided its status to

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the client (e.g. see column 3, lines 59 et seq.). With respect to (b); Examiner would like to emphasize that Todd's management software does manage a cache or poll a cached asset at different frequencies depending upon the relative activity of the cached asset (e.g. see column 5, lines 48 et seq., particularly lines 63-67). Examiner further would like to emphasize that in considering a 35 USC 103 rejection, it is not strictly necessary that a reference or references explicitly suggest the claimed invention (this is tantamount to a 35 USC 102 reference if the modifications would have been obvious to those of ordinary skill in the art. It has been held that the test of obviousness is not whether the features of a secondary reference may be bodily incorporated into the primary references' structure, nor whether the claimed invention is expressly suggested in any one or all of the references; rather, the test is what the combined teachings of the reference would have suggested to those of ordinary skill in the art. See In re Keller et al., 208 U.S.P.Q 871.

**10. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

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A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan V. Thai whose telephone number is (571)-272-4187. The examiner can normally be reached on from 6:30 A.M. to 4:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mathew M. Kim can be reached on (571)-272-4182. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

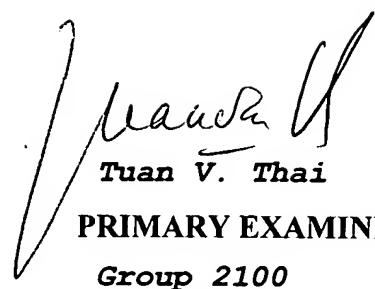
Information regarding the status of an application may be information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**TVT/April 14, 2007**

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Tuan V. Thai

**PRIMARY EXAMINER**

**Group 2100**